

STATE OF TEXAS	§	
	§	Economic Development Agreement
COUNTY OF BEXAR	§	

This Chapter 380 Economic Development Agreement (“Agreement”) is made by and between the City of Helotes, Texas (“City”), a Texas Municipal Corporation, the City of Helotes Economic Development Corporation (“EDC”), and Bandera Helotes Plaza, L.L.C. (“Developer”), a Texas Limited Liability Company, sometimes collectively referred to as the “Parties,” acting by and through their respective authorized officers.

RECITALS

WHEREAS, the Developer owns approximately 1.656 acres of real property in the City of Helotes, Texas located at the northeast corner of the intersection of Bandera Road and Circle A Trail, being more fully described in Exhibit “A” (“Property”); and

WHEREAS, the Developer intends to lease the Property as the "Helotes Plaza", a commercial shopping center consisting of mixed-use retail, office space, and restaurant buildings; and

WHEREAS, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State’s economy and the elimination of unemployment or underemployment; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the municipality; and

WHEREAS, pursuant to the Development Corporation Act, Article 5190.6 Tex. Rev. Civ. Stat. (“Act”), the City has created the EDC to implement programs for promoting economic development; and

WHEREAS, the EDC’s mission is to promote, encourage, and enhance the creation of jobs, the expansion of the local tax base, and Helotes’ quality of life through projects that assist in the retention and expansion of existing employers and which attract new employers and aid in their development and growth; and

WHEREAS, the EDC has determined, according to a Resolution (the "Resolution") attached hereto as Exhibit “B,” that making an economic development grant to the Developer, in accordance with this Agreement, constitutes a permissible “Program” within the terms of the Act and will promote new and expanded business development within the City and which is declared and expressly found to be in the public interest; and

WHEREAS, in addition to the six and a quarter percent (6.25%) sales and use tax imposed by the State, the City imposes a one percent (1.00%) sales and use tax, as authorized by Section 321.101 of the Texas Tax Code, and the EDC imposes a one-half percent (0.50%) sales and use tax; and

WHEREAS, the EDC intends, and in connection with such intention, has adopted the Resolution attached as Exhibit "B," to refund fifty percent (50%) of the annual sales and use tax proceeds generated by retail businesses located within the Property, up to and including the Maximum Grant Amount ("Maximum Grant Amount"), hereinafter defined, which shall be used by the Developer to pay for actual Hard and Soft Costs associated with Tenant Improvements, hereinafter defined, the City's sales and use tax proceeds withstanding, to the Developer for the purpose of encouraging business expansion and the creation of new jobs in the City; and

WHEREAS, the City Council of the City of Helotes, Texas intends, and in connection with such intention, has adopted an Ordinance (the "Ordinance") attached hereto as Exhibit "C," to refund fifty percent (50%) of the annual sales and use tax proceeds generated by retail businesses located within the Property, up to and including the Maximum Grant Amount, which shall be used by the Developer to pay for actual Hard and Soft Costs associated with the Tenant Improvements, hereinafter defined, the EDC's sales and use tax proceeds withstanding, to the Developer for the purpose of encouraging business expansion and the creation of new jobs in the City.

NOW, THEREFORE, in consideration of the foregoing and on the terms and conditions hereinafter set forth and for other good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer agree as follows:

I.

AUTHORITY AND TERM

1.1 Authority.

The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City. The City acknowledges that Developer is acting in reliance upon the City's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of new businesses within the Property ("Property").

1.2 Term.

This Agreement shall become enforceable upon the Effective Date, as hereinafter established, and shall continue until the Expiration Date, as hereinafter established, or until the Maximum Grant Amount has been reached, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

II. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

“Adversarial Proceedings” include any cause of action regarding this Agreement filed by the Developer in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration or mediation.

“Code” shall mean the City of Helotes Code of Ordinances.

“Consummated” shall have the meaning assigned by the Texas Tax Code, Section 321.203.

“Contract Progress Payment Request” (“CPPR”) shall mean a request for payment due to the Developer and submitted by the Developer to the City and EDC for successfully completed work to substantiate Hard Costs and Soft Costs for Tenant Improvements, accompanied by customary documentation, including the name and address of the entity that performed the work, a description of the contract pursuant to which the payment is made, proof of payment or satisfaction, the amount of such payment, the original contract amount, total payments made to date on such contract, an estimate of remaining work to be completed on the specific improvement, the cost of such work, and any customary lien and / or subcontractor releases.

“Detailed Confidentiality Report” shall mean a report, attached hereto as Exhibit “D,” provided by the State to the City in accordance with Texas Tax Code, Section 321.3022, which lists the amount of Sales and Use Tax paid (including any refunds, credits, or adjustments) by each Retailer in the Property and received by the City from the State for the sale of Taxable Items by the Retailers Consummated within the Property for specified periods which are to be used to justify the Developer’s CPPR, together with such supporting documentation required herein and as the City may request.

“Economic Development Grants” or “GRANT(S)” shall collectively mean sales and use tax proceeds, pursuant to a CPPR, made from the City and the EDC to the Developer.

“Effective Date” shall mean the date a sales and use tax generating Retailer has commenced operations and Consummated the sale of Taxable Items within the Property. GRANTS shall not be paid by the City to the Developer for Retailers that have commenced Tenant Improvements before the execution of this Agreement by both Parties.

“Expiration Date” shall mean the earlier of:

1. The City and EDC's reimbursement of the Maximum Grant Amount to the Developer for all Hard and Soft Costs associated with the Tenant Improvements;
2. Ten (10) years from the Effective Date of this Agreement; or
3. Uncured default by the Developer.

"Fiscal Year" shall mean October 1st of any given calendar year through September 30th of any given following calendar year.

Gender: The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, and, where the context requires, the plural of any word shall include the singular.

"Hard Costs" shall mean the actual, substantiated costs of construction, labor, and materials incurred by the Developer or Tenant for Tenant Improvements.

"Maximum Grant Amount" shall mean the total Hard and Soft Costs for the Tenant Improvements in an amount not to exceed three-hundred thousand dollars (\$300,000).

"Project" shall mean Tenant Improvements associated with the leasing of Tenant spaces on the Property and the subsequent payment of GRANTS to Developer by the City and EDC for Tenant Improvements associated with sales and use tax generating Retailers, notwithstanding the Developer's initial contribution of a minimum of eighteen dollars (\$18) per square foot for said Tenant Improvements. The City and EDC shall reimburse the Developer GRANTS for Tenant Improvements above eighteen dollars (\$18) per square foot and equal to or below thirty-five dollars (\$35) per square foot, subject at all times to the limits specified in the "Maximum Grant Amount."

"Property" shall mean the real property described in Exhibit "A" upon which the Project, authorized by this Agreement, shall be implemented.

"Retailer" or "Retailers" shall mean Tenants within the Property required by the State of Texas to collect Sales and Use Tax on the sale of Taxable Items Consummated within the Property.

"Sales and Use Tax" shall mean the one and one-half percent (1.50%) sales and use tax imposed by the City and EDC on the sale of Taxable Items Consummated in the City by the Retailers, it being expressly understood that the Sales and Use Tax receipts are being used only as a measurement for City and EDC participation through the use of their general fund or other lawful source of payment.

"Sales Tax Payment Period" or "Payment Period" shall mean a full quarter of the City's Fiscal Year, except that the first Sales Tax Payment Period shall be from the Effective Date through and including the last date of the first full quarter of the City's Fiscal Year following the Effective Date.

“Sales Tax Receipts” shall mean fifty percent (50%) of the City and EDC’s receipts from the Retailers’ collection of the one and one-half percent (1.50%) Sales and Use Tax as a result of the sale of Taxable Items by the Retailers for the applicable Sales Tax Payment Period Consummated within the Property.

“Subcontractor” or “contractor” shall mean an individual, firm, or corporation having a direct contract with the Developer or the Tenant in the performance of work on any part of the Project.

“Soft Costs” shall mean the costs incurred by the Developer or Tenant for engineering, legal, design, fiscal security, insurance, permits, project management (including contractor general condition expenses), and all other costs associated with the construction of Tenant Improvements which are not included in Hard Costs.

“Taxable Items” shall mean both “taxable items” and “taxable services,” defined by Chapter 151, Texas Tax Code, as amended.

“Tenant” or “Tenants” shall mean a Retailer who pays rent to the Developer to use building space within Helotes Plaza.

“Tenant Improvements” shall mean improvements made according to the Project and accommodating the needs of a Tenant, limited to framing, plumbing, electrical and mechanical systems, fire protection, millwork, floor and wall coverings, ceilings, partitions, lighting, interior and exterior signage, equipment necessary for the operation of a particular use (i.e. kitchen appliances), and security, which are above the Developer’s required contribution of eighteen dollars (\$18) per square foot and below an amount not to exceed thirty-five dollars (\$35) (the “TI Cap”) per square foot. Developer shall be responsible for costs associated with any Tenant Improvements exceeding the TI Cap.

III.

ECONOMIC DEVELOPMENT GRANTS

3.1 Grants.

The City and EDC agree to reimburse the Developer, after the commencement of the Effective Date, through Economic Development Grants (“GRANTS”) not to exceed the Maximum Grant Amount for all Hard and Soft Costs associated with the Tenant Improvements. The City and EDC shall not, as a condition precedent to the payment of any GRANT, reimburse the Developer until a sales and use tax generating Retailer subject to this Agreement has commenced operations and Consummated the sale of Taxable Items within the Property.

3.2 Grant Payments.

The City and EDC shall remit to the Developer Sales Tax Receipts Consummated within the Property for the Sales Tax Payment Period requested by the Developer for actual Hard and Soft Costs incurred by the Developer or Tenant in their completion of Tenant Improvements

within the Property and associated with the Project. The GRANT to the Developer will be paid to the Developer within sixty (60) days following the City and EDC's receipt of a properly completed CPPR from the Developer following the end of each City Fiscal Year Quarter beginning with the first full City Fiscal Year Quarter following the Effective Date, and shall continue until the full payment of the Maximum Grant Amount or other method of termination of this Agreement. The Parties agree that the payment of Sales Tax Receipts to the Developer is subject to the City and EDC's actual collection of Sales Tax Receipts. In the event the Sales Tax Receipts are insufficient during the term of this Agreement to pay the GRANTS, the City and EDC shall not be obligated to pay the GRANTS from any other source of funds or required to pay such deficit to the Developer. Notwithstanding any provision contained herein to the contrary, the Developer shall have the right to receive Sales Tax Receipt payments beginning with the first full City Fiscal Year Quarter following the Effective Date and continuing until the full payment of the Maximum Grant Amount or the Agreement is terminated by other means, as listed in Article VII.

3.3 Grant Limitations.

The City and EDC shall not be obligated to pay any monies above the Maximum Grant Amount, unless otherwise agreed by the Parties, and are only obligated to make GRANTS for Sales Tax Receipts received by the City or EDC. Developer represents that it understands that any contributions by the Developer in anticipation of reimbursement from GRANTS shall never be obligations of the general funds of the City or EDC, but are only obligations of the GRANTS fund, and are subject to the extent of the Project's capacity to reimburse the Developer.

3.4 Grant Funds.

GRANTS to be provided herein shall be paid solely from lawful, available funds from the City and EDC. Under no circumstances shall any GRANTS include any receipts from the City and EDC's imposition and collection of Sales and Use Tax for the sale of Taxable Items at any location, business, establishment, or entity Consummated within the City other than from the sale of Taxable Items by the Retailers Consummated within the Property.

3.4.1 No Bonds or Notes.

The City, EDC, and Developer represent that they understand and agree that neither the City nor the EDC shall issue any bonds or notes to cover any Project costs directly or indirectly related to this Agreement. The City and EDC understand that Developer may choose to issue notes utilizing GRANT reimbursements for eligible costs directly or indirectly related to this Agreement. The City and EDC will not be Parties to the Developer's notes.

3.5 Confidentiality.

The City and EDC agree, to the extent allowed by law, to keep all information and documentation received from the State of Texas, pursuant to this Agreement hereof (“Confidential Tax Information”), confidential. The City and EDC will use the Confidential Tax Information solely for the purposes of determining the Developer’s entitlement to GRANT funds.

IV.

CONDITIONS TO ECONOMIC DEVELOPMENT GRANTS

The obligation of the City and EDC to pay GRANTS shall be conditioned upon the Developer’s continued compliance with and satisfaction of each of the conditions set forth below and in this Agreement, as solely and finally determined by the City Council of the City of Helotes, Texas without recourse.

4.1 CPPR.

Developer shall, as a condition precedent to the payment of any GRANT, provide the City and EDC with a CPPR reasonably suitable for the applicable GRANT period.

4.2 Detailed Confidentiality Report.

As a condition to the payment of any GRANTS hereunder, the City and EDC shall receive a Detailed Confidentiality Report for the applicable Sales Tax Payment Period for which payment of a GRANT is requested. The City and EDC shall have no duty to calculate Sales Tax Receipts, determine the Developer’s entitlement to any GRANT, or pay any GRANT during the term of this Agreement until such time as the City and EDC have been provided with a Detailed Confidentiality Report for the applicable Sales Tax Payment Period. At the request of the City or EDC, the State of Texas (“State”) shall provide any such documentation as may be reasonably requested by the City or EDC to evidence, support, and establish the Sales and Use Tax paid and collected (including Sales and Use Tax paid directly to the State pursuant to a direct payment permit) by the Retailers for the sale of Taxable Items by Retailers Consummated within the Property and received by the City and EDC from the State. The Detailed Confidentiality Report shall, at a minimum, contain, include, or be accompanied by the following:

- (a) A schedule detailing the amount of Sales and Use Tax proceeds collected by the Retailers and paid to the State as a result of the sale of Taxable Items Consummated in the City within the Property for the previous City Fiscal Year Quarter; and
- (b) Information concerning any refund or credit of Sales and Use Tax received by the Retailers (including any Sales and Use Tax paid directly to the State pursuant to a direct payment permit) which have previously been reported by the Retailers as Sales and Use Tax paid or collected.

4.3 Retailers’ Report.

During the term of this Agreement beginning with the Effective Date, the Developer shall provide the City and EDC and maintain during the term of this Agreement a list of each Retailer

that occupies or occupied the Property during the applicable Sales Tax Payment Period, including the taxpayer identification number, taxpayer outlet number (as shown on the Texas Sales Tax Permit), taxpayer name, taxpayer location as reported to the State of Texas, and any other information required by the State of Texas to generate and provide the City with the Comptroller's Detailed Confidentiality Report for the applicable Sales Tax Payment Period. During any Sales Tax Payment Period, the City and EDC shall only remit GRANTS for Retailers that appear on the Detailed Confidentiality Report that contracted with Developer to lease Tenant space within the Property during the Sales Tax Payment Period in which the City and EDC were notified by the Developer of the Retailers' occupancy status and who appear on the Sales Tax Certificate.

4.4 Sales Tax Disclosure.

Developer shall use commercially reasonable efforts to include in each lease executed after the execution date of this Agreement, as a condition precedent to the payment of any GRANTS, language which requires Developer, Retailers, and their successors and assigns to sign or cause to be signed any documentation necessary to authorize the State Comptroller's Office to release and disclose to the City and EDC, for the term of this Agreement, any and all Sales and Use Tax information relating to any Retailer generating Sales and Use Tax proceeds within the Property, including, as necessary, a form in materially the same format as that attached hereto as Exhibit "D".

4.5 Audit.

Developer shall, upon reasonable prior written notice to the City Secretary and during normal business hours, have the right to audit and inspect the City and EDC's records, books, and all other relevant records related to this Agreement. The City and EDC shall, upon reasonable prior written notice to the Developer and during normal business hours, have the right to audit and inspect the Developer's records, books, and all other relevant records related to this Agreement. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.

4.6 Recapture.

In the event of default, the City shall, after providing Developer notice and an opportunity to cure, have the right to recapture GRANTS, pursuant to Section 5.3 hereof, provided to Developer for the Tenant Improvements pursuant to this Agreement. Notwithstanding any other provision in this Agreement to the contrary, any recapture provided by this subsection as to default by Developer with specific regard to Sections 5.1.13 and 5.1.13A hereof, shall be limited to Developer's knowing violations of such Sections. And, provided further that any limitation on the right of recapture described herein shall inure only to Developer and shall not relieve Tenant of its liability to Developer or City in the event of default as otherwise provided for herein, or as may be imposed by separate third party agreement with the Developer.

4.7 Guidelines for Submission.

The City Administrator shall develop guidelines setting forth the specific details and procedural requirements for the timely submission of CPPR(s) and the disbursement of GRANTS pursuant to this Agreement, including appropriate penalties for late, deficient, or untimely submissions. Such guidelines shall be implemented by written order signed by the City Administrator. All guidelines applicable to Developer within 30 days after the execution of this Agreement shall not be materially changed without prior notice to the Developer.

V.

COVENANTS AND DUTIES

5.1 Developer's Covenants and Duties. – DEVELOPER MAY NOT BE THE CONTRACTOR FOR TENANT IMPROVEMENTS.

Developer makes the following covenants and warranties to the City and EDC and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Developer.

5.1.1 Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.

5.1.2 The execution of this Agreement has been duly authorized by the Developer, and the individual signing this Agreement on behalf of the Developer is empowered to execute such Agreement and bind the company. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Developer's company agreement, by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.

5.1.3 The Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings.

5.1.4 To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

5.1.5 The funds herein granted shall be used solely for the purpose of constructing Tenant Improvements within the Property and associated with the Project, including all Hard Costs and Soft Costs.

5.1.6 Developer shall timely and fully comply with all of the terms and conditions of this Agreement.

5.1.7 Developer shall use commercially reasonable efforts to confirm Tenant Improvements are completed, as required under the applicable leases, by providing the City with

the contractor or subcontractor's completion certificate and, if applicable, Tenant's final Certificate of Occupancy. Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of Tenant Improvements within the Property.

5.1.8 Developer shall require Tenant to prepare plans and specifications for the Tenant Improvements prior to starting any construction, if required by the applicable lease or City Code.

5.1.9 Developer agrees to require the Tenant Improvements to be constructed substantially in accordance with (i) the plans and specifications approved by the City, (ii) applicable federal, state, and local laws and ordinances, and (iii) this Agreement. Developer also agrees to provide bi-annual reports of leasing status and upcoming Tenant Improvements upon the reasonable request of the City.

5.1.10 Tenants or contractor shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Developer, in its sole discretion, may choose to comply with any or all City ordinances and rules promulgated after the Effective Date of this Agreement. Developer's Tenants agree to comply with all City ordinances and rules in effect at the time this Agreement is executed.

5.1.11 Developer shall have a continuing duty to cooperate with the City and EDC in providing all necessary information to assist City and EDC in complying with this Agreement and to execute such other and further documents as may be reasonably required to comply therewith, provided however that any duty required by this subsection shall not continue beyond the expiration date of the Agreement.

5.1.12 Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by the Developer in regard to the development of the Project, the Property for all areas owned by the Developer during construction of the Project, and for so long as the Developer owns those areas.

5.1.13 With respect to Tenant Improvements, Developer or Tenant shall make a good faith effort to contract with or hire local qualified workers, companies, and Historically Underutilized Businesses in the manner prescribed by State Law in subcontracting any of the construction work required to be performed under the Tenant Improvements or this Agreement. Contracts for the construction of Tenant Improvements reimbursed by the Grant Funds shall be competitively bid in compliance with Chapter 252 of the Local Government Code and be constructed by or on behalf of the Developer in compliance with all applicable law. Should the Developer or Tenant not competitively bid a Tenant Improvement, the Developer or Tenant must obtain written approval by the City in order to be eligible for partial reimbursement of those Project Costs not competitively bid pursuant to the regulations set forth in Chapters 252 of the Local Government Code.

5.1.13A The provisions of Chapter 2258, Texas Government Code, are expressly made a part of this Agreement. In accordance with the provisions of Chapter 2258, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement shall be made part of this Agreement. Developer shall forfeit as a penalty to the City Sixty Dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman, or mechanic is paid less than the said stipulated rates for any work done under said contract, by Developer or any subcontractor under the Developer. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code, shall not be construed to relieve the Developer from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen, or mechanics insofar as applicable to the work to be performed under this Agreement. The Developer, in the execution of this Agreement, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex, or origin. The Developer shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

5.1.14 Developer Bears Risk of Reimbursement. The Developer represents that it understands that any contributions made by the Developer in anticipation of reimbursement from GRANT funds shall not be, nor shall be construed to be, financial obligations of the City or the EDC. The Developer shall bear all risks associated with reimbursement, including, but not limited to: pre-development agreement costs, incorrect estimates of GRANT funds, changes in tax rates or tax collections, changes in State Law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, default by tenants, unanticipated effects covered under legal doctrine of force majeure, and/or other unanticipated factors.

5.1.15 Financing. The cost of the Tenant Improvements and all other improvement expenses associated with the Project shall be funded through the use of the Developer's own capital or through credit secured solely by the Developer. The Developer may use any or part of the Property as collateral for the construction loan or loans, as required for the financing of the Project. The City will use available GRANT funds, up to the Maximum Grant Amount provided herein, to reimburse the Developer for eligible Hard and Soft Costs it has expended. These GRANT fund reimbursements made to the Developer are not intended to reimburse the Developer for all its costs incurred in connection with performing its obligations under this Agreement.

5.2 City and EDC's Covenants and Duties.

The City and EDC are obligated to pay the Developer an amount not to exceed the Maximum Grant Amount from sources contemplated by this Agreement over a period not to exceed ten (10) years, subject to Developer's timely and full satisfaction of all applicable duties and terms within this Agreement, as solely determined by the City Council of the City of Helotes, Texas. Further, City and EDC's obligations to pay the Developer shall cease upon the

earlier of: (1) payment in full of the Maximum Grant Amount; (2) reaching the Agreement's Expiration Date; or (3) Uncured Default by the Developer.

5.3 Substantial Compliance and Default.

5.3.1 Default by Developer. If the Developer should Default with respect to any obligation of this Agreement and should fail to cure within sixty (60) days after receipt of written notice of such Default from the City or EDC, then the Developer shall pay to the City liquidated damages as provided for herein. The harm caused by a breach of this Agreement is difficult to estimate and damages from a breach are not readily ascertainable and, therefore, the Parties agree that the following liquidated damages are a fair and reasonable forecast of the just compensation that should be paid by the Developer to the City if a breach occurs:

(a) Between years one thru five from the Effective Date of this Agreement, the liquidated damages are seventy-five percent (75%) of the GRANT(S) paid to the Developer by the City and the EDC to the date of the breach;

(b) Between years six thru ten from the Effective Date of this Agreement, the liquidated damages are fifty percent (50%) of the GRANT(S) paid to the Developer by the City and the EDC to the date of the breach;

5.3.2 Failure by either Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of Default if uncured within sixty (60) days of receiving written notice from the other Party. Failure of the Developer to timely and substantially cure a default will give the City and EDC the right to terminate this Agreement, as solely and finally determined by the City Council of the City of Helotes, Texas

VI.

DESIGN CRITERIA / DEVELOPMENT STANDARDS

6.1 In any event of a conflict between any requirements of this Agreement, all Exhibits hereto, and any applicable Code requirement, the more stringent requirement shall control. For any issues not covered by this Agreement, the more stringent of the applicable Code section(s) or State law shall control.

VII.

TERMINATION

7.1 Termination.

This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) A written agreement of the Parties;
- (b) The Agreement's Expiration Date;
- (c) An uncured Default by the Developer; or

(d) The Payment of the Maximum Grant Amount.

7.2 Termination by Maximum Grant Amount.

If the Agreement is terminated by reaching the Maximum Grant Amount, the City is required to issue a letter to the Developer stating that the Maximum Grant Amount has been reached.

7.3 Extension beyond Term and Reimbursement.

In recognition of the fact that GRANTS are, by necessity, calculated and paid after taxes have been levied and paid to the City and EDC and, therefore, will always be paid in arrears, the Expiration Date of this Agreement will be extended until any and all GRANTS relating to applicable Sales Tax Receipts during the effective term of the Agreement have been paid in full by the City and EDC to the Developer. Notwithstanding the above, the Development Standards set forth in Section VI of this Agreement and all other substantive requirements imposed upon Developer shall be perpetual and shall not terminate unless specified otherwise in this Agreement. The Parties hereto agree that neither the City nor the EDC can guarantee that GRANT Funds shall completely reimburse the Developer, but that the GRANT Funds paid to Developer during the effective term hereof shall constitute the total reimbursement to the Developer for the construction of the Tenant Improvements regardless of the actual cost thereof.

VIII.

DISPUTE RESOLUTION

8.1 Mediation.

If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first, in good faith, seek to resolve the dispute through negotiation between each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, Dallas, Texas, before resorting to arbitration, litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation, mediation, and arbitration collectively known as alternate dispute resolution (“ADR”) shall be assessed equally between the City and Developer with each party bearing their own costs for attorney’s fees, experts, and other costs of ADR and any ensuing litigation

8.2 During the term of this Agreement, if Developer files and / or pursues an adversarial proceeding against the City regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the City’s option, all access to the GRANTS provided for

hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account until the resolution of such adversarial proceeding.

8.3 Under no circumstances will the GRANT funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against City or EDC.

IX. MISCELLANEOUS

9.1 Binding Agreement.

The terms and conditions of this Agreement shall be binding on and inure to the benefit of the City, EDC, Developer, and their respective successors and assigns. The City Administrator shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the City Council of the City of Helotes, Texas, on behalf of the City related thereto.

9.2 Mutual Assistance.

City, EDC, and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

9.3 Representations and Warranties.

City and EDC represent and warrant to the Developer that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the City and EDC that it has the requisite authority to enter into this Agreement.

9.4 Assignment.

Developer shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the City Council of the City of Helotes, Texas; any assignment provided for herein shall relieve the Developer of any liability to the City or EDC, including any required indemnity in the event that any Assignee hereof shall at anytime be in default of the terms of this Agreement. The Agreement may only be assigned in the event that the Assignee agrees to perform without limitation each and every obligation imposed on Assignor (Developer) herein and the City receives adequate assurance in suitable form and manner of Assignee's ability to undertake such obligations.

9.5 Independent Contractors.

9.5.1 It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, the Developer or Tenant at no time will be acting as agents of the City or EDC and that all consultants or contractors engaged by the Developer or Tenant will be independent contractors of the Developer or Tenant. The Parties hereto understand and

agree that the City or EDC will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Developer or Tenant under this Agreement, unless any such claims are due to the fault of the City or EDC.

9.5.2 By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of Parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City or EDC with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

9.6 Notice.

Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

If intended for City or EDC:

City of Helotes
City of Helotes EDC
12951 Bandera Road (Physical)
P.O. Box 507 (Mailing)
Helotes, TX 78023

With a required copy to:

Steven M. Pena
Davidson & Troilo
7550 West IH-10, Ste. 800
San Antonio, Texas 78229

If intended for Developer:

Bandera Helotes Plaza, L.L.C
P.O. Box 250
Cold Spring Harbor, NY 11724

Either Party may designate a different address at any time upon written notice to the other Party.

9.7 Governing Law.

The Agreement shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be in Bexar County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

9.8 Amendment.

This Agreement may be amended by mutual written agreement of the Parties, as approved by the City Council of the City of Helotes, Texas.

9.9 Legal Construction.

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

9.10 Interpretation.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

9.11 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council of the City of Helotes, Texas.

9.12 Recitals.

The recitals to this Agreement are incorporated herein as findings of fact.

9.13 Paragraph Headings.

The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

9.14 Counterparts.

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

9.15 Exhibits.

Any Exhibits attached hereto are incorporated by reference for all purposes.

9.16 Survival of Covenants.

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

9.17 Employment of Undocumented Workers.

During the term of this Agreement, the Developer agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), the Developer shall be in Default and pay the liquidated damages set forth in Section 5.3.1. The Developer is not liable for an unknown violation of this Section by a Tenant or by a person with whom the Developer contracts; provided,

however, the identical federal law requirements provided for herein shall be included as part of any agreement or contract, which Developer enters into with any Tenant, subsidiary, assignee, affiliate, or franchisee for which GRANTS provided herein will be used.

9.18 Indemnification.

DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND EDC AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR EDC DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER'S TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'S TENANTS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY AND/OR EDC, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND EDC AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY AND EDC, IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY AND/OR EDC, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY AND/OR EDC SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, IS AN INDEMNITY EXTENDED BY DEVELOPER TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY AND/OR EDC, FROM THE CONSEQUENCES OF THE CITY'S AND / OR EDC'S OWN NEGLIGENCE BUT NOT INTENTIONAL MISCONDUCT;

PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT ACT OF CITY AND / OR EDC IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY AND / OR EDC IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. DEVELOPER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND / OR EDC, AND IN THE NAME OF CITY AND / OR EDC ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY AND / OR EDC (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

THE DEVELOPER SHALL ALSO INDEMNIFY THE CITY AND / OR EDC AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF THE DEVELOPER OR DEVELOPER'S TENANTS AND THE DEVELOPER OR DEVELOPER'S TENANTS' GENERAL CONTRACTOR'S ACTIONS RELATED TO THE CONSTRUCTION OF THE TENANT IMPROVEMENTS.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE EDC SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR EDC AND THEIR OFFICERS, EMPLOYEES, AND ELECTED OFFICIALS PERMITTED BY LAW.

9.19 Insurances; Subcontractors.

9.19.1 The Developer shall maintain, at its own cost and expense, such usual, customary, and appropriate insurance as will protect Developer, City, and EDC from all claims for damages to persons and to property which may arise from any operations under this Agreement, or any of its amendments. The following are the types of insurance policies and the minimum limits of insurance coverage which shall be maintained by the Developer during the construction of the Tenant Improvements. All insurance shall contain a provision that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to the City and EDC. All such insurance shall remain in effect until completion and acceptance by the City of the Tenant Improvements. , Both the City and EDC shall be named as additional insured on all policies of insurance provided for herein and the City and EDC shall be provided with certificates naming each entity on all policies of insurance required hereby.

9.19.2 Prior to commencing any work, Developer shall request from and provide to the City and EDC at the address shown above, Certificates of Insurance under all

such policies, certifying compliance with the minimum coverage outlined below. All policies shall be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, thirty (30) days advance written notice of such cancellation or reduction will be mailed to the City of Helotes, 12951 Bandera Road (Physical), P.O. Box 507 (Mailing), Helotes, Texas 78023.

9.19.3 Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A(-)VI or better.

9.19.4 Comprehensive General Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence, and \$2,000,000.00 aggregate. Such insurance shall include the following:

9.19.4.1 Entity's protective liability, covering liability for work sublet.

9.19.4.2 Developer has the contractual liability, insuring the indemnity agreements contracted in this Agreement.

9.19.4.3 Coverage for damage due to collapse of or structural injury to any buildings or structure due to excavation, tunneling, pile driving, cofferdam or caisson work or dredging; to moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof; to blasting or explosions; or to wires, conduits, pipes, mains, sewers, tanks, tunnels, or any other property below the surface of the ground.

9.19.4.4 Waiver of subrogation against the City and EDC.

9.19.5 The failure of the Developer at anytime to provide the insurance required by Section 9.19 shall be considered a material breach of this Agreement for which the City and EDC shall be entitled to damages, including termination of the Agreement for uncured violations.

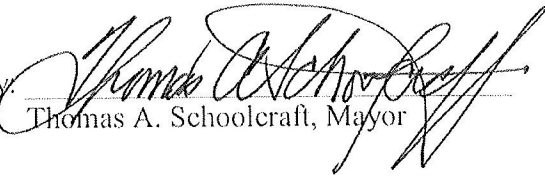
9.20 Additional Instruments.

City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.


[Signature Pages to Follow]

Executed on this 13 day of August, 2010

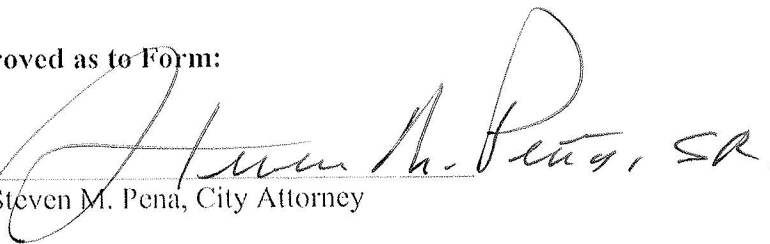
CITY OF HELOTES, TEXAS

By: 
Thomas A. Schoolcraft, Mayor

Attest:

By: 
Grace Tamez, City Secretary

Approved as to Form:

By: 
Steven M. Pena, City Attorney

Executed on this 19th day of August, 2010

**CITY OF HELOTES ECONOMIC
DEVELOPMENT CORPORATION**

By: Ardith H. Garner
Ardith Garner, President

Attest:

By:

for Paul Friedrichs, EDC Secretary

Approved as to Form:

By:

Steven M. Pena, SP.
Steven M. Pena, EDC Attorney

Executed on this 30 day of August, 2010

BANDERA HELOTES PLAZA, L.L.C.
a Texas limited liability company

By: 

By: _____

Name: _____

Title: _____

Amy Stevens
President

Approved as to Form:

By: _____

Attorney

BANDERA HELOTES PLAZE, L.L.C.
a Texas limited liability company

EXHIBITS

Exhibit "A"	Legal Description of the Property
Exhibit "B"	EDC Resolution of Support
Exhibit "C"	City Ordinance
Exhibit "D"	Sample State Comptroller Detailed Confidentiality Report

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION
TRACT III

BEING A 1.656 ACRE TRACT OF LAND OUT OF A 4.721 ACRE TRACT OUT OF A 7.791 ACRE TRACT CALLED TRACT "F" OUT OF A 267.619 ACRE RESURVEY OF A 266.595 ACRE TRACT DESCRIBED BY DEED RECORDED IN VOLUME 4417, PAGES 9 THRU 16 OF DEED RECORDS OF BEXAR COUNTY, TEXAS; SAID LAND BEING OUT OF THE COMANCHE CREEK IRRIGATION COMPANY SURVEY NO. 355, IN THE CITY OF HELOTES, BEXAR COUNTY, TEXAS; SAID 1.656 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a 1/2" iron rod found on the North Right-of-Way line of Bandera Road (State Hwy. No. 16) marking the most Westerly corner of Lot 1, Block 1, County Block 4525A, Helotes Park Commercial Subdivision, recorded in Volume 7800, Page 67, Deed and Plat Records, Bexar County, Texas;

THENCE North 61 degrees 22 minutes 27 seconds West 239.73 feet along the North Right-of-Way line of Bandera Road (State Hwy. No. 16) to a 1/2-inch iron rod set with cap marked "Rosin Johnson" marking the most Westerly corner of the herein-described tract;

THENCE North 28 degrees 37 minutes 24 seconds East 155.00 feet to a 1/2-inch iron rod set with cap marked "Rosin Johnson";

THENCE North 61 degrees 22 minutes 36 seconds West 30.00 feet to a 1/2-inch iron rod set with cap marked "Rosin Johnson";

THENCE North 28 degrees 37 minutes 24 seconds East 142.89 feet to a 1/2-inch iron rod set with cap marked "Rosin Johnson" on the Southwest line of Lot 14, Block 1, Helotes Park Estates Subdivision Unit "I", recorded in Volume 4900, Page 238, Deed and Plat Records, Bexar County, Texas marking the most Northerly corner of the herein described tract;

THENCE 213.99 feet along a curve to the left containing the following parameters:

Radius=1862.01 feet

Tan=107.11 feet

Delta=06 degrees 35 minutes 05 seconds

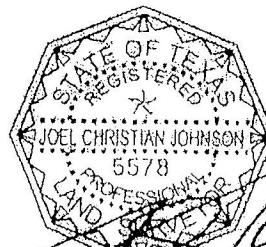
Chord Bearing=South 62 degrees 51 minutes 41 seconds East

Chord Distance=213.88 feet

to a 1/2-inch iron rod set with cap marked "Rosin Johnson" on the Southwest line of Lot 12, Block 1 of said Helotes Park Estates Subdivision;

THENCE South 66 degrees 25 minutes 01 seconds East 29.05 feet to a 1/2-inch iron rod set with cap marked "Rosin Johnson" marking the most Northerly corner of said Lot 1, also marking the most Easterly corner of the herein described tract;

THENCE South 23 degrees 34 minutes 59 seconds West 307.18 feet along the Northwest line of said Lot 1 to the POINT OF BEGINNING.



A RESOLUTION

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE CITY OF HELOTES ECONOMIC DEVELOPMENT CORPORATION ("EDC") APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF HELOTES, TEXAS ("CITY"), EDC, AND BANDERA HELOTES PLAZA, L.L.C. ("DEVELOPER") FOR SALES AND USE TAX GRANTS FOR THE CONSTRUCTION OF TENANT IMPROVEMENTS IN THE HELOTES PLAZA SHOPPING CENTER ON APPROXIMATELY 1.656 ACRES OF REAL PROPERTY LOCATED NEAR THE INTERSECTION OF S.H. 16 (BANDERA ROAD) AND CIRCLE A TRAIL; INCORPORATING RECITALS; DECLARING A PUBLIC PURPOSE; AUTHORIZING THE CITY ADMINISTRATOR AND EDC EXECUTIVE DIRECTOR TO IMPLEMENT THE PROVISIONS OF THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the Developer owns approximately 1.656 acres of real property in the City of Helotes, Texas located at the northeast corner of the intersection of Bandera Road and Circle A Trail, being more fully described in Exhibit "A" ("Property"); and

WHEREAS, the Developer intends to develop the Property as the Helotes Plaza Shopping Center, a commercial shopping center consisting of mixed-use retail, office space, and restaurant buildings; and

WHEREAS, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State's economy and the elimination of unemployment or underemployment; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the municipality; and

WHEREAS, pursuant to the Development Corporation Act, Article 5190.6 Tex. Rev. Civ. Stat. ("Act"), the City has created the EDC to implement programs for promoting economic development; and

WHEREAS, the EDC's mission is to promote, encourage, and enhance the creation of jobs, the expansion of the local tax base, and the quality of life for Helotes' residents through projects that assist in the retention and expansion of existing employers, and which attract new employers and aid in economic development and growth; and

WHEREAS, the vision of the EDC includes a balance of sales and property taxes that takes into account our town's historic roots and unique environment, resulting in an improved quality of life for all Helotes citizens; and

WHEREAS, the EDC Board of Directors, upon the Project's presentment, a public hearing held thereon, and notice of said hearing having first been duly published in The Helotes Echo, the EDC website, and the City of Helotes agenda bulletin board, has determined that making an economic development grant to the Developer in accordance with this Agreement constitutes a permissible "Program" within the terms of the Act, as defined by Art. 5190.6 Development Corporation Act of 1979, Secs. 2 and 4(B) of Vernon's Texas Civil Statutes, and will promote new and expanded business development within the City and which is declared and expressly found to be in the public interest; and

WHEREAS, in addition to the six and a quarter percent (6.25%) sales and use tax imposed by the State, the City imposes a one percent (1.00%) sales and use tax, as authorized by Section 321.101 of the Texas Tax Code, and the EDC imposes a one-half percent (0.50%) sales and use tax; and

WHEREAS, the EDC intends, and in connection with such intention, adopts this Resolution to refund fifty percent (50%) of the annual sales and use tax proceeds generated by retail businesses located within the Property, up to and including Three Hundred Thousand Dollars for actual Hard and Soft Costs associated with the Tenant Improvements, the City's sales and use tax proceeds withstanding, to the Developer for the purpose of encouraging business expansion and the creation of new jobs in the City; and

WHEREAS, the City Council of the City of Helotes, Texas intends, and in connection with such intention, has adopted an Ordinance, as described in Exhibit "C," to refund fifty percent (50%) of the annual sales and use tax proceeds generated by retail businesses located within the Property, up to and including Three Hundred Thousand Dollars, the EDC's sales and use tax proceeds withstanding, to the Developer for the purpose of encouraging business expansion and the creation of new jobs in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF HELOTES ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION ONE. FINDINGS OF FACT. All of the above recitals and those recitals included within the Chapter 380 Economic Development Agreement, attached hereto as Attachment One and incorporated herein by reference as if fully copied and set forth at length, are found to be true and correct and the EDC incorporates the same in this Resolution as findings of fact.


SECTION TWO. APPROVAL AND PUBLIC PURPOSE. The Chapter 380 Economic Development Agreement, attached hereto as Attachment One and incorporated herein by reference as if fully copied and set forth at length, between the City, EDC, and Bandera Helotes Plaza, L.L.C. be approved and declared to serve the economic development purpose of promoting new and expanded business development within the City.

SECTION THREE. AUTHORIZATION. The City Administrator and EDC Executive Director is authorized to take all necessary steps to implement the provisions of this Resolution.

SECTION FOUR. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this Resolution. The EDC Board of Directors hereby declares that it would have passed this Resolution, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared void.

SECTION FIVE. EFFECTIVE DATE. This Resolution shall be effective immediately upon adoption and the expiration of sixty (60) days following the Project's first publication in The Helotes Echo newspaper.

PASSED AND APPROVED by the Board of Directors of the City of Helotes Economic Development Corporation this 18th day of August 2010.



Ardith Garner
President
City of Helotes Economic Development Corporation

ATTEST:



for Paul Friedrichs
Secretary
City of Helotes Economic Development Corporation

ORDINANCE NO. 433

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HELOTES, TEXAS ("CITY") APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY, THE CITY ECONOMIC DEVELOPMENT CORPORATION ("EDC"), AND BANDERA HELOTES PLAZA, L.L.C. FOR SALES AND USE TAX GRANTS FOR THE CONSTRUCTION OF TENANT IMPROVEMENTS IN THE HELOTES PLAZA SHOPPING CENTER ON APPROXIMATELY 1.656 ACRES OF REAL PROPERTY LOCATED NEAR THE NORTHEAST CORNER OF THE INTERSECTION OF S.H. 16 (BANDERA ROAD) AND CIRCLE A TRAIL; PLACING FOR CONSIDERATION AND ADOPTION THE SAID ECONOMIC DEVELOPMENT AGREEMENT ON THE SUBSEQUENT EDC MEETING AGENDA; INCORPORATING RECITALS; DECLARING A PUBLIC PURPOSE; AUTHORIZING THE CITY ADMINISTRATOR TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Helotes, Texas ("City") desires to enter into a Chapter 380 Economic Development Agreement between the City, the EDC, and Bandera Helotes Plaza, L.L.C for the construction of tenant improvements near the intersection of S.H. 16 (Bandera Road) and Circle A Trail; and

WHEREAS, the City Council desires the EDC to place for consideration and adoption said Chapter 380 Economic Development Agreement on its subsequent meeting agenda dated August 18, 2010.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF HELOTES THAT:

SECTION ONE. FINDINGS OF FACT. All of the above recitals and those recitals included within the Chapter 380 Economic Development Agreement, attached hereto as Attachment One and incorporated herein by reference as if fully copied and set forth at length, to be true and correct and incorporates the same in this Ordinance as findings of fact.

SECTION TWO. APPROVAL AND PUBLIC PURPOSE. The Chapter 380 Economic Development Agreement, attached hereto as Attachment One and incorporated herein by reference as if fully copied and set forth at length, between the City, EDC, and Bandera Helotes Plaza, L.L.C. be approved and declared to serve the economic development purpose of promoting new and expanded business development within the City.

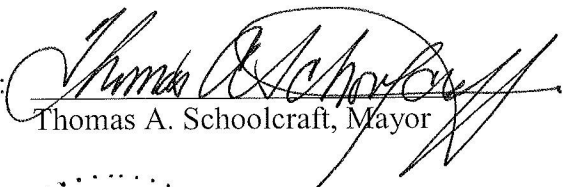
SECTION THREE. AUTHORIZATION. The City Administrator is authorized to take all necessary steps to implement the provisions of this Ordinance.

SECTION FOUR. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared void.

SECTION FIVE. REPEALING ORDINANCE IN CONFLICT. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION SIX. EFFECTIVE DATE. This Ordinance shall be effective immediately upon adoption.

PASSED AND APPROVED this 12th day of August 2010.

By: 
Thomas A. Schoolcraft, Mayor

ATTEST:


Grace Tamez, City Secretary



State of Texas
 Comptroller of Public Accounts
 Open Government Division

Record Layout and Field Descriptions for:

CONFIDENTIAL LOCAL TAX INFORMATION RECORDS

Format: Fixed\CSV (Comma Separated Values)

Columns	Length	Field Description
1-311		TAX INFORMATION RECORD (including delimiters)
1-11	11	Taxpayer Number
14-63	50	Taxpayer Name
67-106	40	Taxpayer Address
110-129	20	Taxpayer City
133-134	2	Taxpayer State
137-141	5	Taxpayer Zip Code
143-148	6	Taxpayer NAICS Code
150-154	5	Outlet Number
157-206	50	Outlet Name
210-249	40	Outlet Address
253-272	20	Outlet City
276-277	2	Outlet State
280-284	6	Outlet Zip Code
286-291	4	Outlet NAICS Code
293-298	12	Allocation Month (YYYYMM)
300-311	2	Tax Payment (\$99999999.99)
313-313	1	Obligation Type (R = Return, A = Audit)
315-320	6	Period Obligation Begin Date
322-327	6	Period Obligation End Date
329-340	12	Total Tax Payment

 THE INFORMATION PROVIDED TO THE CITY IS CONFIDENTIAL. It is not open to public inspection. A city may use the information only for the purpose of economic forecasting (Tex. Tax Code 321.3022(c)). Unauthorized distribution of confidential information is punishable by 6 months in jail and a \$1,000 fine (Tex. Govt Code sec. 552.352).

NOTES:

The data has been formatted as a "comma delimited" text file. All fields have been separated by commas, and character fields have been enclosed in quotes. The columns designate the beginning and ending positions of each field and exclude the delimiter characters.

The records are sorted by Taxpayer Number.

All of the records for one taxpayer are grouped together. The "master" records with the Allocation Month and Tax Payment fields are listed first. Followed by "outlet" records with the outlet information fields. Outlet information fields are blank for "master" records. Allocation Month and Tax Payment fields are

blank for "outlet" records.

Taxpayer/Outlet NAICS Code: North American Industry Classification System Code.

IMPORTANT: Many steps are taken to ensure the greatest accuracy possible for this data. If you notice information that appears incorrect, please notify Tax Allocations at 1-800-531-5441, ext. 3-4494 so steps can be taken to make the corrections.

You can reach us at:

E-mail: open.records@cpa.state.tx.us

Phone: 1-800-531-5441, ext. 6-6013 (936-6013 in Austin)